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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 167

CHARLES F. BLACKTON,

Petitioner,

vs.

AARON GORDON.

ON WRIT OF CERTIORARI TO THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY.

PETITIONER'S BRIEF ON THE MERITS.

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INDEX.

Subject Index.

	Page
Opinion of the court below	1
Jurisdiction	1
Claims advanced below and rulings made	2
Statement of the case	3
Summary of argument	5
Argument	9
Point I—The wages of seamen, including those engaged in the coastwise trade, are exempt by Federal law from arrestment or attachment from any court	9
(a) The law prior to the Seaman's Act of March 4, 1915	11
(b) The effect of the Seaman's Act of March 4, 1915	13
(1) Scope of Act of 1915	15
(2) Title of Act of 1915	16
(3) Legislative history of Act of 1915	16
(4) Manner of enactment of exemption in 1915	18
(5) Sec. 18 of Act of 1915	19
(6) Omission of restrictions as to trade in Sec. 12 of Act of 1915	19
(7) Rules of construction applicable	20
(8) Review of the cases in point	22
(c) The effect of the adoption of the United States Code on June 30, 1926, and supplements thereto	27
Point II—Findlay, the captain of a tugboat, was a seaman within the provisions of Section 12 of the Act of March 4, 1915 (46 U. S. C. A. 601)	29
Conclusion	36
Appendix	37

Table of Cases Cited.

	Page
Allen v. *Hallett*, 1 Fed. Cas. No. 223, pp. 472, 473	34
City of Los Angeles v. *United Dredging Co.*, 14 F. (2d) 365	34
Burns v. *Fred L. Davis Co.*, 271 Fed. 439	10, 14, 23, 27
Burns Brothers No. 31, The, 29 F. (2d) 855	32
DeGaetano v. *Merritt & Chapman D. & W. Co.*, 203 App. Div. 259, 196 N. Y. S. 573	34
Duggar v. *Mobile & Gulf Nav. Co.*, 224 Ala. 359, 140 So. 611	35
Ellis v. *United States*, 206 U. S. 246	21
Epps v. *Epps*, 17 Ill. App. 196	26, 29
Grimberg v. *Admiral Oriental Steamship Line*, 300 Fed. 619	34
Hickman v. *Hanover*, 33 F. (2d) 873	21
Hills v. *Joseph*, 229 Fed. 865	21, 30
Hynes v. *Feehan*, 4 N. F. 750	12
Inter-Island Nav. Co. v. *Byrne*, 239 U. S. 459,	10, 13, 14, 18, 22, 24
Knickerbocker Ice Co. v. *Stewart*, 253 U. S. 149	10
Kuhlman v. *W. & A. Fletcher Co.*, 20 F. (2d) 465	34
Manufacturers Trust Co. v. *Anderson*, 271 N. Y. Supp. 333	26
Martin v. *Acker*, 16 Fed. Cas., p. 884	34
McCarty v. *Steam Propeller City of New Bedford*, 4 Fed. 818	11, 18
Meyer v. *Dollar Steamship Line*, 43 F. (2d) 425	34
Nogueira v. *N. Y., N. H. & H. R. Co.*, 281 U. S. 128	33
Olson v. *Mellon*, 4 F. Supp. 947	28
Ornstein v. *Pittsburgh S. S. Co.*, 209 Ill. App. 202	14, 25
Osterhoudt v. *Stade*, 133 App. Div., 83, 117 N. Y. S. 809	21
Rogosich v. *Union Dry Dock & Repair Co.*, 67 F. (2d) 377	34
Saylor v. *Taylor*, 77 Fed. 476	34
Scott, In re, 250 Fed. 647	31
Smiley v. *Holm*, 285 U. S. 355	28
Southern Pacific Co. v. *Jensen*, 244 U. S. 205	10
State v. *Shook*, 97 Oh. St. 164, 118 N. E. 1010	21

Page

Swinehammer v. *Sawler*, 27 N. S. 448 11
The Amelia, 183 Fed. 899 ..... 11, 18, 21
The Balsa, 16 F. (2d) 408 32
The Buena Ventura, 243 Fed. 797 ..... 32, 34
The Burns Brothers No. 31, 29 F. (2d) 855 32
The George, Fed. Cases, No. 5329 32
The Mary Elizabeth, 24 Fed. 397 34
The North American, 18 Fed. Cas., p. 339 34
The Sea Lark, 14 Fed. (2d) 201 34
The ZR-3, 18 F. (2d) 122 32
United States v. *Atlantic Transport Co.*, 188 Fed. 42 34
United States v. *Lindgren*, 28 F. (2d) 725 31
United States v. *Nelson*, 100 Fed. 125 33
United States v. *Thompson*, 28 Fed. Cas. 102 34
Van Lier v. *Dord*, Fed. Cases No. 16862 32
Warner v. *Goltra*, 293 U. S. 155 28
Wilder v. *Inter-Island Navigation Co.*, 211 U. S. 239 ..... 14, 21, 24, 30

STATUTES CITED.

Act of June 7, 1872, 17 Stat. 262, Sec. 61 ..... 6, 14
Act of June 7, 1872, Sec. 65, R. S. 4612 ..... 8, 9, 12
Act of Congress of June 9, 1874 (18 Stat. 64), 46 U. S. C. A. 544 ..... 2, 3, 5, 7, 12, 27
Act of Congress of March 4, 1915 (38 Stat. 1164) 2, 9, 13
Act of Congress of March 4, 1915, Section 12 (38 Stat. 1169), 46 U. S. C. A. 601 ..... 2, 4, 5, 25
Act of Congress of March 4, 1915, Section 18 (38 Stat. 1185) 19
Act of June 30, 1926, Chap. 712, 44 Stat. 777 ..... 27, 28
Massachusetts, Rev. L., Chapter 189, Sec. 31 25
Merchant Marine Act of 1920, Sec. 33, 46 U. S. Code, Sec. 688 8
New Jersey Statute (Chapter 204, P. L. 1924, Section 12, 1 Cum. Supp. to Compiled Stats., p. 982) 4, 10
R. S. Sec. 2174 (Compiled Stat. 1916, Sec. 4357) 31
R. S. Sec. 4536 ..... 6, 12, 14, 15, 22
R. S. Sec. 4612 ..... 8, 12

	Page
U. S. C. A., Title 28, Section 344(b)	21
U. S. C. A., Title 28, Sec. 837	32
U. S. C. A., Title 46, Section 544	3
U. S. C. A., Title 46, Section 601	3, 4, 26, 27, 29
U. S. C. A., Title 46, Section 684 (R. S. 4582)	32

OTHER AUTHORITIES CITED.

52 Cong. Rec., p. 4639	17
p. 4641	17
p. 4733	17
51 C. J., p. 922	33
11 Op. Atty. Gen. 458 (1866)	32
Rose's Notes on United States Reports (1926), Rev. & Sup. Vol. 5, p. 504	25
Webster's New International Dictionary	33

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PETITIONER'S BRIEF ON THE MERITS.

Opinion of the Court Below.

The opinion of the Court of Errors and Appeals of the State of New Jersey is reported below in 118 N. J. L. 159. This opinion affirmed the judgment of the New Jersey Supreme Court for the reasons expressed in the New Jersey Supreme Court opinion. The New Jersey Supreme Court opinion is reported in 117 N. J. L. 40.

Jurisdiction.

The date of the judgment of the New Jersey Court of Errors and Appeals to be reviewed is April 30, 1937 (R.

36, 37). Petition for writ of certiorari was filed June 23, 1937, and granted October 11, 1937 (R. 38). The jurisdiction of this Court is conferred by Section 344 (B) Title 28, United States Code Annotated, page 206, and by Rule 38, Section 5 (A), Title 28, United States Code Annotated page 24.

Claims Advanced Below and Rulings Made.

Petitioner contended below that the wages of seamen were exempt from execution because of the provisions of an Act of Congress of March 4, 1915 (38 Stat. 1164) entitled "An Act to Promote the Welfare of American Seamen in the Merchant Marine of the United States; * * *", Section 12 of that Act (38 Stat. 1169) which became part of the United States Code Annotated provided (46 U. S. C. A. 601 (R. 34)):

> "*No* wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any court, and every payment of wages to a seaman or apprentice shall be valid in law, notwithstanding any previous sale or assignment of wages or of any attachment, encumbrance, or arrestment thereon; and no assignment or sale of wages or of salvage made prior to the accruing thereof shall bind the party making the same, except such allotments as are authorized by this chapter. *This section shall apply to fishermen employed on fishing vessels as well as to seamen: Provided,* That nothing contained in this or any preceding section shall interfere with the order by any court regarding the payment by any seaman of any part of his wages for the support and maintenance of his wife and minor children. (Mar. 4, 1915, c. 153, Sec. 12, 38 Stat. 1169.)"

Respondent contended that the provisions of this section of the Act, *supra,* were limited by the provisions of an Act of Congress of June 9, 1874 (Chap. 260, 18 Stat. 64) which

became part of the United States Code Annotated, and which provides (46 United States Code Annotated 544):

> "None of the provisions of an Act entitled 'An Act to authorize the appointment of shipping commissioners by the several circuit courts of the United States to superintend the shipping and discharge of seamen engaged in merchant ships belonging to the United States, and for the further protection of seamen' shall apply to sail or steam vessels engaged in the coastwise trade, except the coastwise trade between the Atlantic and Pacific coasts, or in the lake-going trade touching at foreign ports or otherwise, or in the trade between the United States and the British North American possessions, or in any case where the seamen are by custom or agreement entitled to participate in the profits or result of a cruise or voyage. (June 9, 1874, c. 260, 18 Stat. 64.)"

The court below found that Section 544 of the United States Code Annotated expressly took seamen engaged on vessels in the coastwise trade out of the exemption granted by the provisions of Section 601 and, in fact, limited Section 601 to seamen engaged between east coast, west coast or foreign trade (R. 30).

Statement of the Case.

On January 9, 1934, respondent recovered a judgment of $500 and costs against Horace Findlay. On February 2, 1934, he obtained an order for execution against wages (R. 7). This order was against the wages and income due to Findlay from his employer, Erie Railroad Company, and required the railroad company to pay over to the constable of the court the sum of $10 every pay day until the judgment was satisfied (R. 22-23, Exhibit P-3 (C)).

A copy of the writ was served on the petitioner who was superintendent of the marine department of the railroad company (R. 10). Findlay, at the time of the service of

the writ, was employed as a captain of the tug Waverly, a United States registered vessel (R. 13). The Waverly operated within the lighterage limits of the New York Harbor (R. 13). His hours of duty were from 4 P. M. to 12 P. M. (R. 14). The petitioner did not deduct any part of Findlay's wages (R. 14). The treasurer of the railroad company by letter returned the writ and advised the clerk of the court that Findlay's employment exempted his wages from execution by virtue of the provisions of Section 601 of Title 46 of the United States Code Annotated (R. 24, Exhibit P-3 (E)).

Suit was then instituted by the respondent against the petitioner, predicated on the provisions of a New Jersey statute (Chapter 204; P. L. 1924, Section 12, 1 Cum. Supp. to Compiled Stats., pg. 982), which made liable the proper officer of a corporation who failed or refused to pay over to the officer presenting the execution the percentage of the indebtedness as shown therein (R. 1-2). This statute is printed as an appendix to this brief. Motions for nonsuit and direction of a verdict on the grounds that the wages of seamen were exempt from execution by virtue of the provisions of Section 601, Title 46 of the U. S. C. A. were denied (R. 16-17). Judgment was entered in favor of the respondent and against the petitioner for the sum of $106 and costs (R. 18). Petitioner appealed to the New Jersey Supreme Court. This Court assumed that Findlay was a seaman but held, in affirming the judgment, that seamen engaged in coastwise trade were not entitled to the exemption provided for in Section 601 of Title 46 of the U. S. C. A. because Section 544 of Title 46 of the U. S. C. A. limited the provisions of Section 601 (R. 28-32).

Petitioner appealed the judgment of the New Jersey Supreme Court to the New Jersey Court of Errors and Appeals. The New Jersey Court of Errors and Appeals affirmed the judgment of the New Jersey Supreme Court for

the reasons expressed in the opinion of the Supreme Court (R. 30).

Summary of Argument.

Petitioner, a superintendent of the Marine Department of the Erie Railroad Company, upon whom was served a writ of execution against wages, contends that the wages of all seamen regardless of what kind of trade they are engaged in, are exempt from execution issued out of a State court. Two questions are involved:

1. Whether or not the wages of seamen engaged in the coastwise trade are exempt from execution by virtue of the provisions of Section 12 of the Seamen's Act of March 4, 1915 (38 Stat. 1169; 46 United States Code Annotated, Section 601); and

2. Whether a master is a seaman within the purview of Section 12 of that act.

I.

Sec. 12 of the Seamen's Act of March 4, 1915, grants an exemption from garnishment of wages to "Any seaman or apprentice" and any State statute in conflict therewith is void. The Act of June 9, 1874, Chap. 260, 18 Stat. 64; 46 U. S. C. A. 544, places no limitation on the Act of March 4, 1915, and the wages of all seamen whether engaged in coastwise trade or not are exempt from execution. In order to show that the Act of 1874 is not a limitation on Section 12 of the Act of 1915, we view the law during three periods:

(a) Prior to the Act of 1915;

(b) Under the Act of 1915;

(c) Under the United States Code of June 30, 1926 and supplements thereto.

(a)

An exemption of wages from garnishment was afforded seamen by the maritime law, irrespective of statute. Nothing in the maritime law of this or other countries indicates any intent to restrict the exemption to any particular class of seamen. The exemption, in fact, was permitted coastwise seamen under the maritime law of this country. Legislative recognition was given to this rule of maritime law by Congress by the Shipping Commissioners' Act of June 7, 1872, 17 Stat. 262, Sec. 61 of which provided for an exemption to be enjoyed by "any seaman or apprentice". This provision became Sec. 4536, Revised Statutes, and its operation on the coastwise trade was removed by the Act of June 9, 1874, Chap. 260 (18 Stat. 64), which provided that none of the provisions of the Act of 1872 should apply to the coastwise trade.

(b)

In 1915, Congress passed an "Act to promote the welfare of American seamen in the merchant marine of the United States * * *" (38 Stat. 1164), in Sec. 12 of which the prior exemption provision (R. S. Sec. 4536) was expressly repealed and a new exemption provision, applicable to fishermen (not previously included) as well as to "any seaman or apprentice", was enacted. Petitioner contends this new exemption provision is applicable to all seamen in the merchant marine of the United States, in the coastwise as well as the foreign trade, for the following reasons: (1) The broad scope of the Act of 1915, designed for the protection of American seamen in general, as shown by the general applicability of other sections in the Act, as well as by the broad title, (2) the inclusion of fishermen, who are engaged almost exclusively in the coastwise trade, making the law inconsistent with any exclusion of seamen

in the coastwise trade from its benefits, (3) the legislative history of the Act of 1915, showing the intent of Congress to make Sec. 12 applicable to seamen generally, (4) the language of Sec. 18 of the Act of 1915 making the Act applicable to all vessels of the United States, (5) the fact that no language restricting the application of Sec. 12 to any particular trades, waters, or vessels, was included in Sec. 12, although where Congress desired to restrict the application of other sections of the Act of 1915, specific restrictive words were included therein, (6) a rule of liberal construction is almost universally applied to exemption statutes, and a rule of strict construction to provisions restricting the exemption.

(c)

The application of the exemption law provided by Sec. 12 of the Act of 1915 to seamen, apprentices and fishermen generally, irrespective of whether in the coastwise or foreign trade, was not changed by the inclusion of both Sec. 12 of the 1915 Act and also the Act of June 9, 1874, in the same chapter and title of the U. S. Code of 1926 (*i. e.*, as Title 46, U. S. C., Secs. 601 and 544). The compilers of the Code were not empowered to make any changes in the law, and no inference can be drawn from such inclusion of these sections in the law, except that each was *prima facie* part of the general and permanent laws of the United States. The law is, therefore, the same after as before the adoption of the code, and seamen in the coastwise trade may still claim the exemption given them by Sec. 12 of the Act of 1915.

II.

A master of a vessel is a seaman. Petitioner, the master of a coastwise vessel, is entitled to the benefits of Sec. 12 of the Act of March 4, 1915, which accords to "all seamen"

the right of exemption of wages from garnishee proceedings.

The Act of March 4, 1915, does not contain any definition of the word seaman. Examination of the exemption statute in the light of the Act of which it is a part reveals no reason for excluding any particular class of seaman from the benefits of Sec. 12. In construing the word "seaman" in another section of the Act of 1915 (Sec. 20, as amended, Merchant Marine Act of 1920, Sec. 33, 46 U. S. Code, Sec. 688) this Court has held that the word included a master.

In the absence of a definition of the word in the Act under consideration, the word should be given its ordinary meaning. Ordinarily the word is construed to include all those who follow the sea, including masters.

There is nothing in the history of exemption statutes to exclude masters from the benefits accorded to other seamen. The Act of June 7, 1872, contained an exemption statute applicable to seamen. That Act also contained a definition of seaman as "every person (apprentices excepted) who shall be employed or engaged to serve in any capacity on board" (Sec. 65, Act of 1872, R. S. 4612). That section also contained a definition of the word "master" as "every person having the command of any vessel".

The Act of 1872 contained a number of provisions affecting the relationship of "masters" and "seamen" one to another; hence in the construction of such sections it was necessary to distinguish between the two. But it does not follow that, in the sections not dealing with the relationship of masters and seamen one to another, but applying to seamen generally and affecting their rights as a class against their creditors, Congress intended to exclude masters when the definition of seaman is clearly broad enough to include them. To reach such a conclusion it would be necessary to read into the definition of seaman an exception which is

not there. This Court has said that the definition of seaman in R. S. 4612 is directed to extension not restriction. The express exception of apprentices from the definition of seaman shows that Congress intended to include all others who are ordinarily looked upon as seamen, including masters.

The definition in the Act of 1872 (R. S. 4612) does not govern this case, arising under the Act of March 4, 1915; but if it did a master is included within the plain terms of the definition of seaman contained in the 1872 statute.

ARGUMENT.

I.

The wages of seamen, including those engaged in the coastwise trade, are exempt by Federal law from arrestment or attachment from any court.

The wages of seamen are exempt from arrestment or attachment from any court under the provisions of the Act of Congress of March 4, 1915, Chapter 153 (38 Stat. 1164), entitled "An Act To promote the welfare of American seamen in the merchant marine of the United States; * * *". Section 12 of that Act (38 Stat. 1169) reads as follows:

> "That no wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any court, and every payment of wages to a seaman or apprentice shall be valid in law, notwithstanding any previous sale or assignment of wages or of any attachment, encumbrance, or arrestment thereon; and no assignment or sale of wages or of salvage made prior to the accruing thereof shall bind the party making the same, except such allotments as are authorized by this title. This section shall apply to fishermen employed on fishing vessels as well as to seamen: Provided, that nothing contained in this or any preceding section shall interfere with the order by

any court regarding the payment by any seaman of any part of his wages for the support and maintenance of his wife and minor children. Section forty-five hundred and thirty-six of the Revised Statutes of the United States is hereby repealed."

While a New Jersey statute (Chapter 204, P. L. 1924, sec. 12, 1 Cum. Supp. to Comp. Stat., p. 982) permits executions against wages, such statute is void and inoperative as to seamen on vessels within the jurisdiction of the United States, and the process of the State court issued under such statute is also void and inoperative. This follows from the rule that contracts of seamen, being maritime in nature, are within the paramount powers of Congress to regulate and protect.

Burns v. *Fred L. Davis Co.* (C. C. A., 1st), 271 Fed. 439, 443;

Southern Pacific Co. v. *Jensen,* 244 U. S. 205;

Knickerbocker Ice Co. v. *Stewart,* 253 U. S. 149.

Prior to the enactment of Section 12 of "An Act to promote the welfare of American seamen in the merchant marine of the United States; * * *", *supra,* this Court, in *Inter-Island Nav. Co.* v. *Byrne,* 239 U. S. 459, held that seamen engaged in the coastwise trade between the period from June 9, 1874, to the effective date of the Act of March 4, 1915, were not entitled to exemption against wages. But petitioner will show that *from the effective date of the Act of March 4, 1915, down to the present time, seamen in the coastwise trade have been entitled to the exemption.*

To show this, it will be necessary to examine the legislative history of the exemption provision. For clarity, we will divide this discussion into three parts:

(a) the law prior to the Seamen's Act of March 4, 1915;

(b) The effect of the Seamen's Act of March 4, 1915; and

(c) The effect of the adoption of the United States Code of June 30, 1926, and supplements thereto.

(a) The Law Prior to the Seaman's Act of March 4, 1915.

Before discussing the legislation with reference to the exemption of seamen's wages from arrestment or attachment, it is to be noted that irrespective of any statute under the maritime law, seamen's wages were exempt from attachment in suits at common law.

The Amelia, (D. C., S. D., Ala.), 183 Fed. 899, 901;
McCarty, et al. v. *Steam Propeller City of New Bedford* (D. C., S. D., N. Y.), 4 Fed. 818.

There is no reason, in the absence of express statutory prohibition, for depriving seamen in the coastwise trade of the benefit of protective measures such as this. Seamen engaged in the coastwise trade are of no different type or less deserving of the benefit of this law than seamen in other trades. Examination of the maritime law of this and other countries shows nothing to indicate any restrictions on the exemption of any particular class or classes of seamen. In *The Amelia, supra,* it was clearly shown that under the maritime law the wages of a seaman engaged in the coastwise trade were exempt from attachment. That the exemption has long been a rule of the maritime law is clearly shown in the *McCarty* case, *supra,* Benedict, D. J., saying, p. 823:

> "I find, therefore, in the Consolato, the French ordinances, and the law of England, good ground for the opinion that by the maritime law of the United States the wages of seamen are not subject to garnishment at the instance of a creditor of the seamen in an action at law."

Similar protection is afforded seamen in Canada and Newfoundland. *Swinehammer* v. *Sawler,* 27 N. S. 448;

Hynes v. *Feehan*, 4 N. F. 750. It is clear, therefore, that this rule is no new creation of the statute, but one long recognized by maritime nations on the ground of public policy.

In 1872, Congress gave legislative recognition to this rule of maritime law by a comprehensive act containing sixty-eight sections, approved June 7, 1872, Chapter 322, 17 Stat. 262, and entitled, "An Act to Authorize the Appointment of Shipping Commissioners • • • ." Congress prescribed regulations concerning the employment, wages, treatment and protection of seamen. Section 61 of that Act provides, page 276:

> "That no wages due or accruing to any seaman on apprentice shall be subject to attachment or arrestment from any court; and every payment of wages to a seaman or apprentice shall be valid in law, notwithstanding any previous sale or assignment of such wages, or of any attachment, encumbrance, or arrestment thereon; and no assignment or sale of such wages or of salvage made prior to the accruing thereof, shall bind the party making the same, except such advance securities as are provided for in this act."

Without material modification in language this provision became Section 4536 of the Revised Statutes, enacted into law June 22, 1874. Sec. 5601, Revised Statutes, provided that the revision did not affect or repeal any Act passed after December 1, 1873.

By Act of June 9, 1874, Chapter 260, 18 Stat. 64, entitled "*An Act in Reference to the Operations of the Shipping Commissioners' Act,* • • •" Congress had provided:

> "*That none of the provisions of an act entitled 'An act to authorize the appointment of shipping commissioners* • • •" shall apply to sail or steam vessels engaged in the coastwise trade, except the coastwise trade between the Atlantic and Pacific Coast, or in the lake-

going trade touching at foreign ports or otherwise, or in the trade between the United States and the British North American possessions * * *." (Italics ours.)

The effect of the Act of June 9, 1874, was, of course, to exclude seamen engaged in the coastwise trade and certain other trades from the benefits of the "Shipping Commissioners Act" (Act of June 7, 1872), including the exemption from arrestment of wages provided by Section 61 of that Act, and it was so held by the United States Supreme Court in *Inter-Island Nav. Co.* v. *Byrne,* 239 U. S. 459.

However, the *Byrne* case was decided after the approval of the Act of March 4, 1915, on a set of facts arising prior to the effective date of the act of March 4, 1915, and consequently, the holding of the case which was to the effect that the Act of 1872 was limited by the Act of 1874 is in no wise a construction of the Act of March 4, 1915.

In the case *sub judice,* we are not dealing with a question arising prior to the Act of March 4, 1915, but with one arising subsequent to and under the provisions of the latter Act. As to the application of the exemption provision of the latter Act, the *Byrne* case is not concerned, except that in the last paragraph of the opinion Mr. Justice McReynolds definitely indicated that the law had been changed by the Act of 1915 as we shall attempt to show.

(b) The effect of the Seaman's Act of March 4, 1915.

On March 4, 1915, Congress enacted a new law designed for the further protection of seamen, and that law has been in force since its effective date, being known as the *"Act to promote the welfare of American seamen in the merchant marine of the United States* * * *" (Act of March 4, 1915, Chapter 153, 38 Stat. 1164).

Section 12 of the 1915 Act, which is quoted, *supra,* had a very important effect on the prior seamen's wage exemption

law, for it expressly *repealed* (see last two lines of Sec. 12) the exemption provision of Sec. 4536 Revised Statutes (originally Sec. 61 of the Act of June 7, 1872), and *enacted as new law* a broader provision operating to exempt from arrestment or attachment the wages of any seaman or fisherman, whether in the *foreign, coastwise, or lake-going trade.*

Burns v. *Fred L. Davis Co.* (C. C. A. 1st), 271 Fed. 439;
Ornstein v. *Pittsburgh S. S. Co.*, 209 Ill. App. 202;
See *Inter-Island Nav. Co.* v. *Byrne*, 239 U. S. 459, 463.

In *Inter-Island Nav. Co.* v. *Byrne, supra,* while the Court's holding was with reference to a question arising *before* the Act of March 4, 1915, went into effect, the last paragraph of the opinion nevertheless made it clear that it was the Court's understanding that *the latter Act had changed the law* so as to allow seamen in the coastwise trade the benefit of the exemption. With reference to the question as to whether seamen in the *coastwise* trade were entitled to the exemption (a point that had been left undecided in *Wilder* v. *Inter-Island Navigation Co.*, 211 U. S. 239, 245), Mr. Justice McReynolds said, in the *Inter-Island Nav. Co.* case, at page 463:

> "The particular point now presented was reserved in *Wilder* v. *Inter-Island Navigation Co.*, 211 U. S. 239, 245. *It has become of less importance since the Act of March 4, 1915, c. 153, 38 Stat. 1164, 1169, wherein the provisions of Sec. 61 of the act of 1872 were re-enacted.*" (Italics ours.)

The only meaning we can attribute to the statement that the question "has become of less importance since the Act of March 4, 1915", is that Congress had answered the question left undecided by the *Wilder* case by removing the exemption provision from the limitation of the Act of June 9, 1874, and reenacting it in the new Seamen's Act of March 4, 1915, an act affected by no such limitation. The law having thus been changed, the actual holding in the *Inter-Island Nav. Co.* case was clearly of less importance.

(1) SCOPE OF ACT OF 1915.

However, to clarify the point and show the actual intent of Congress when it adopted the Seamen's Act of March 4, 1915, it is first necessary to consider the Act itself.

It was a permanent law of broad scope designed for the protection of seamen on American vessels, and in many cases even seamen on foreign vessels while within the jurisdiction of the United States. It seems clear that when Congress in Sec. 12 of that Act (38 Stat. 1169) repealed the prior exemption provision of Sec. 4536 of the Revised Statutes, and thus took it out of the Revised Statutes and incorporated in this new permanent law a broader exemption applicable to fishermen as well as to seamen, with no limitation on its application to seamen and fishermen expressed therein; Congress definitely indicated its intention that the exemption should thereafter be available to all seamen, including those in the coastwise as well as in the foreign trade.

An examination of the Seamen's Act of March 4, 1915, reveals that it is a general and permanent statute in which Congress rewrote the law dealing with the shipping of seamen, their wages and effects, discharge, protection, relief, life saving appliances, etc. We find in this statute no general distinction or discrimination as to the protection of seamen engaged in American merchant ships in the coastwise trade as against those engaged in the foreign trade. Sections 3, 4 and 11, for example, as well as Sec. 12, deal with the rights of seamen generally. This fact is strongly persuasive that Congress intended to put all seamen on the same footing as to their treatment, and their protection in reference to their wages, in the absence of express provision to the contrary.

(2) TITLE OF ACT OF 1915.

Moreover, the title of the Act of 1915 clearly shows a purpose to promote the welfare of American seamen as a general class:

> "An Act to promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea."

The broad title of the Act is strong evidence that its provisions were not intended to be limited to any particular class of seamen or vessel or trade unless there was contained in a particular provision an express limitation to that effect. Where the broad words "any seaman" are mentioned in the Act, it is submitted that Congress intended the term to embrace all seamen within the jurisdiction of the United States, in the coastwise or foreign trade.

(3) LEGISLATIVE HISTORY OF ACT OF 1915.

The intention of Congress that the exemption provision of the Act of 1915 should apply to all seamen within the jurisdiction of the United States, whether on foreign or American vessels, and whether in the foreign or coastwise trade, is further shown by the legislative history in Congress of the bill that was finally adopted as the Seaman's Act of 1915. The texts of the exemption provisions of the Senate bill and the House amendment, prior to ultimate agreement by a conference committee of both houses, were identical, except that the first part of the House amendment read "That no wages due or accruing to any seaman or apprentice *employed on a vessel of the United States* shall be subject to attachment or arrestment from any Court," while the Senate bill did not contain the words "*employed on a vessel of the United States.*"

Since the House amendment and Senate bill differed on that and on certain other points, they were sent to a conference committee in order that the differences might be resolved. The conference committee decided to strike out the limitation "employed on a vessel of the United States" which appeared in the House amendment, in order that the exemption provision might be made applicable to *all seamen*, whether employed on a vessel of the United States or on a foreign vessel. This purpose of Congress is clearly shown by the following quotation from the "Statement of the Managers on the part of the House" regarding the conference report on the Seamen's bill:

> "The managers on the part of the House at the Conference on the disagreeing votes of the two Houses on the Amendment of the House to the bill (S. 136) to promote the welfare of American seamen in the merchant marine of the United States * * *, submit the following written statement explaining the effect of the action agreed on:
>
> * * * * * * *
>
> "Section 12 of the Conference report is the same as Section 12 of the House Amendment, except that the words 'employed on a vessel of the United States' are stricken out, *making the exemptions therein provided for apply to seamen generally*" (52 Cong. Rec., p. 4639). (Italics ours.)

This same statement as to the intention of the conference committee with reference to making Sec. 12 apply to seamen *generally* was made in the Senate debate on the conference report by Senator Fletcher (52 Cong. Rec., p. 4733) and in the House debate on the report by Representative Alexander (52 Cong. Rec., p. 4641).

The text of the bill approved by the conference committee was adopted by both House and Senate and signed by the President. (38 Stat. 1164, 1169.) There is not the slightest

doubt, therefore, in the light of the legislative history of the bill, but that Congress fully intended that the exemption provision should apply to all seamen and fishermen on all vessels within the jurisdiction of the United States.

It might be argued, in view of the holding in *Inter-Island Nav. Co.* v. *Byrne,* 239 U. S. 459, (that as to cases arising prior to the effective date of the Act of March 4, 1915, seamen in the coastwise trade were not entitled to the exemption), Congress should have specifically provided that Sec. 12 should apply to seamen in coastwise trade if it intended they should be entitled to the exemption. It must be remembered, however, that the decision in the *Inter-Island Nav. Co.* v. *Byrne* case was not handed down until December 20, 1915, long after the Act of March 4, 1915, had been adopted, and moreover, that the Supreme Court of the United States had not before passed on the question of the applicability of the exemption statute to the coastwise trade, and that the lower federal courts had construed the exemption provision of the Act of 1872 as *applicable to the coastwise trade* in spite of the Act of June 9, 1874.

The Amelia (D. C., S. D., Ala.), 183 Fed. 899, 901;
McCarty, et al. v. *Steam Propeller City of New Bedford* (D. C., S. D., N. Y.), 4 Fed. 818.

Thus as the law had been interpreted when Congress adopted the Seamen's Act of 1915, the exemption provision had general application to all seamen, and there was no need, because of judicial construction, for Congress to provide *specifically* for application to the coastwise trade.

(4) MANNER OF ENACTMENT OF EXEMPTION IN 1915.

The definite intention of Congress to make the exemption provision of the Act of 1915 applicable generally, is shown also by the *manner* in which the new provision was enacted.

Whereas in the case of other provisions included in the Act of 1915, which Congress desired to modify in only a minor way, it did so by merely *amending* the prior law, in the case of the exemption provision here under consideration, Congress *repealed* the old exemption provision (contained in Sec. 4536 of the Revised Statutes) and enacted a new provision in general terms, and extended it to apply to fishermen. What other reason could Congress have had for repealing the old provision instead of merely amending it, unless it were a desire to make certain that the new exemption provision should be taken out of the old law with its limitations and clearly enacted into a new law with no limitations on its application to seamen and fishermen?

(5) SEC. 18 OF ACT OF 1915.

The broad intention of Congress to make the 1915 Act applicable to all seamen and vessels within the jurisdiction of the United States, except insofar as specifically restricted in the provision involved, is shown by the following provision of Sec. 18 of the Act (38 Stat. 1185), which reads in part as follows:

> "That this Act shall take effect, as to *all vessels* of the United States, eight months after its passage, and as to foreign vessels twelve months after its passage * * *." (Italics ours.)

(6) OMISSION OF RESTRICTIONS AS TO TRADE IN SEC. 12 OF ACT OF 1915.

It is true, of course, that in the case of certain provisions of the new Seamen's Act of 1915, Congress desired, for good and sufficient reason, to restrict their application to certain types of vessels or to vessels navigating in particular waters, or to American-owned vessels. It is very significant that where it desired to *effect such restrictions* on the application of particular sections, *Congress specifically included restric-*

tive words in the text. Thus, in Sec. 1, it was specifically provided: "This section shall not apply to fishing or whaling vessels or yachts." Sec. 2, on the other hand, was specifically limited to "all merchant vessels of the United States of more than one hundred tons gross, excepting those navigating rivers, harbors, bays, or sounds exclusively * * *." Likewise, Secs. 3, 4, 6, 11, 13, 14 and 15 each contain specific provisions limiting their application to certain vessels, waters or trades.

On the other hand, let us examine Sec. 12, the exemption provision. It contains no words of limitation as to what seamen it shall have application. It merely provides:

> "That no wages accruing to *any seaman or apprentice* shall be subject to arrestment or attachment from any Court, * * *. This section shall apply to fishermen employed on fishing vessels as well as to seamen * * *."

If Congress had desired, in rewriting the law in this respect, to exclude seamen in the *coastwise* trade from the benefit of the exemption, surely it would have expressly so provided. It did not do so, and construing Sec. 12 in the light of the other sections of the act, the conclusion is inescapable that Congress intended that all seamen and fishermen should enjoy the exemption, and that no restrictions as to particular vessels or trades were intended.

(7) RULES OF CONSTRUCTION APPLICABLE.

Petitioner contends, moreover, that the broad purpose of Congress in the Act of 1915 to afford protection to all seamen within the jurisdiction of the United States did not contemplate a narrow construction of the Act that would exclude the large class of seamen in the coastwise trade from its benefits. In the construction of a statute such as the exemption provision in question, a liberal rather than a

strict interpretation should be given, with a view to effecting the protection intended to be extended.

The Amelia (D. C., S. D., Ala.), 183 Fed. 899, 900, 901.

This rule of liberal construction of exemption statutes with a view to effecting their beneficent purposes is of practically universal application.

Hickman v. *Hanover* (C. C. A. 4th) 33 F. (2d) 873, 874;
Hills v. *Joseph* (C. C. A. 9th) 229 Fed. 865, 869.

In *Hills* v. *Joseph, supra,* the Circuit Court of Appeals said:

> "The rule of construction applicable to exemption statutes is the most liberal known to the law. As said in 18 Cyc. at page 1380:
>
> 'By all but universal rule the statutes which create or give the right of exemption to a debtor are held subject to the rule of liberal construction. Indeed, it would be more proper to say that they are generally subject to the most liberal construction which the Courts can possibly give them, the Courts taking the ground that, since the statutes have a beneficial object, their first duty is to see that this object is accomplished.' "

Conversely to the rule of *liberal construction of exemptions,* a rule of *strict construction* is applied to *provisions limiting or taking away the exemption,* whether in provisos and exceptions or in amending statutes.

Osterhoudt v. *Stade,* 133 App. Div. 83, 117 N. Y. S. 809;
Epps v. *Epps,* 17 Ill. App. 196;
State v. *Shook,* 97 Oh. St. 164, 118 N. E. 1010.

As is pointed out in *Wilder* v. *Inter-Island Navigation Co.,* 211 U. S. 239, at pp. 248, 249, ordinarily "the sailor's only means of subsistence on shore are his wages earned at sea. If these may be stopped by an attachment suit

the instant his ship is moored to the wharf, a new hardship is added to a vocation already subject to its full share of the ills of life." Were there any doubt as to Congress' intent, although petitioner does not believe there is, if we consider the rule of liberal construction of an exemption and the rule of strict construction of provisos and amending statutes restricting the exemption, it seems only reasonable to conclude that Congress did not intend the new exemption provision of the Seamen's Act of 1915 to be limited by the old Act of 1874 so as to deprive coastwise seamen of its benefits.

(8) REVIEW OF THE CASES IN POINT.

We have endeavored to show in the foregoing argument that it was the intention of Congress in enacting the exemption provision as part of the Act of 1915 to make it apply *to seamen and fishermen in the coastwise trade* as well as to seamen in the foreign trade, and that this intention is clear from an examination not only of the provisions of Sec. 12 and of other provisions of the Act, but also of the title to the Act and of the Committee reports and debates in Congress.

In the light of the foregoing, it is clear why this Court said, in the concluding paragraph of *Inter-Island Navigation Co.* v. *Byrne,* 239 U. S. 459, 463:

> "The particular point now presented was reserved in Wilder *v.* Inter-Island Navigation Co., 211 U. S. 239, 245. *It has become of less importance since the Act of March 4, 1915, c. 153, 38 Stat. 1164, 1169, wherein the provisions of Sec. 61 of the act of 1872 were* reenacted." (Italics ours.)

The plain meaning of the Court in the foregoing quotation is that when Congress repealed the exemption provision of Sec. 61 of the Act of 1872 (later Rev. Stat. Sec. 4536) and

in 1915 reenacted it with the addition of language extending it to fishermen and without words of limitation as to trade as Sec. 12 of the "Act To promote the welfare of American seamen * * *", the law was thereby changed so that the exemption provision was no longer limited by the Act of June 9, 1874. Such change in the law made the question passed upon in *Inter-Island Nav. Co.* v. *Byrne* a matter of *less importance, i. e.,* a matter rather of academic and historical interest.

That such was the clear meaning of the last paragraph of the opinion in *Inter-Island Nav. Co.* v. *Byrne* was likewise the view of the United States Circuit Court of Appeals for the First Circuit in *Burns* v. *Fred L. Davis Co.*, 271 Fed. 439. In the *Burns* case *supra,* it appeared that the libellant shipped on the libellee's schooner for a voyage from the Port of Gloucester to the Bay of Islands and to the Ports of Newfoundland and back to the Port of Gloucester. At the time of his discharge there was due him as wages $101.50. Shortly before his discharge the Gorton-Pew Vessels Co. sued the libellant in a District Court of Massachusetts in which it trusteed the libellee seeking to hold whatever wages were due to the libellant from his voyage. The libellant had also made an assignment of $50. of his wages to one Massel, which was recorded as required by law, and notice of such assignment was given to the libellee and demand made for payment. The libellee declined to pay the libellant his wages unless the attachment was discharged and the assignment cancelled. The Gorton-Pew Vessels Co. discharged the attachment, but Massel never cancelled his assignment. Upon receiving notice of the discharge of the attachment, the libellee offered the libellant his wages, but he declined to accept them unless certain statutory penalties and costs of the libel were paid. The District Court held that the libellant should recover

$101.90 with interest, but without costs. On appeal, the court, in finding that the libellee withheld the wages without sufficient cause and that the libellant was entitled to additional pay as well as costs of the libel, speaking through Bingham, J., said:

> "In 1915 Congress repealed section 4536 of the Revised Statutes, *and enacted in its stead* section 12 (38 Stat. at Large, c. 153, Sec. 12, p. 1169 (Comp. St. Sec. 8325a)), * * *
>
> "The language of section 12 is not materially different from that of section 4536 of the Revised Statutes, * * *.
>
> "But the effect to be given to the language of section 12, as compared with the equivalent language of section 4536, is quite different, for the Act of June 9, 1874 (18 Stat. at Large, c. 260, p. 64 (Comp. St. Sec. 8291)), made section 4536 inapplicable to seamen employed on vessels 'engaged in coastwise trade, * * *'
>
> *"By the enactment of section 12, which repealed section 4536 of the Revised Statutes, the limitation placed upon the language of that section by the Act of June 9, 1874, has been removed. Inter-Island Navigation Co.* v. *Byrne,* 239 U. S. 459, 463, 36 Sup. Ct. 132, 60 L. Ed. 382." (Italics ours.)

A careful reading of the opinion reveals that the case is a definite holding on the following propositions:

1. That in 1915 when Congress repealed Sec. 4536 of the Revised Statutes and enacted in its stead Sec. 12, the limitation placed upon the language of that section by the Act of June 9, 1874, was removed, on the authority of *Inter-Island Nav. Co.* v. *Byrne,* 239 U. S. 459, 463, and therefore that the wages of seamen in the trade with the British North American possessions are exempt from arrestment or attachment from any court.

2. That under *Wilder* v. *Inter-Island Nav. Co.,* 211 U. S. 239, Sec. 12 of the Seaman's Act of 1915 prevents the seizure of seamen's wages not only from writs of

attachment issued before judgment but by proceedings after judgment in aid of execution.

3. That under a State statute (Rev. L., Mass., Chapter 189, Sec. 31) no process may be validly issued from a State Court trusteeing the wages of a seaman.

4. That the wages of a fisherman in the trade with the British North American possessions are exempt from arrestment or attachment by reason of Sec. 12 of the Act of March 4, 1915, and any State law in conflict therewith is invalid.

That *Burns* v. *Fred L. Davis Co.* followed and was in harmony with the statement of the U. S. Supreme Court in the last paragraph of its opinion in *Inter-Island Nav. Co.* v. *Byrne, supra,* is clearly brought out in *Rose's Notes on United States Reports* (1926), Rev. & Sup. Vol. 5, p. 504.

Such holding by the Court that the wages of a fisherman on a voyage to a British North American possession are exempt from garnishment is necessarily of course a holding that the exemption provision of the Federal law contained in the Act of 1915 is not limited by the Act of June 9, 1874. The Court could not have reached its decision on this branch of the case except by holding that Sec. 12 was not limited by the Act of 1874, for the Act of 1874 provided that the Act of 1872, which included the original exemption provision, did not apply to sail or steam vessels "engaged in the coastwise trade, * * * or in the trade between the United States and the British North American possession * * *."

Adopting the same view, an Illinois appellate court in *Ornstein* v. *Pittsburgh S. S. Co.,* 209 Ill. App. 202, held (in 1916) that the wages of a seaman employed by a steamship company operating on the Great Lakes were not subject to garnishment, because of the exemption provision of Section 12 of the Seaman's law approved March 4, 1915.

The *Ornstein* decision is a holding that the exemption provision of Section 12 is not limited by the Act of June 9,

1874, for the latter Act provided that the Act of 1872 was inapplicable to the lakegoing as well as the coastwise trade.

The question was squarely presented to the New York Supreme Court, Appellate Division, in *Manufacturers Trust Company* v. *Anderson*, 271 N. Y. Supp. 333, in April, 1934. The opinion of the Court is brief and is set forth herein in full:

> "Order of Appellate Term reversed on the law and facts, with costs, and order of the City Court of the City of New York, County of Kings, which vacated the garnishee order affirmed with $10.00 costs and disbursements. In our opinion the Seamen's Act of 1915 (38 Stat. 1164) was more than a mere re-enactment of the Law of 1872 for the reason that the wages of 'fishermen' (not included in the Act of 1872) and all 'seamen' are made exempt from execution and attachment (Sec. 12; 46 U. S. C. A. 601). It seems clear that it was the intention of the Congress by the Act of 1874 (Act, Cong. June 9, 1874, 18 Stat. 64), which excepted seamen of coastwise trade from the exemption given them by the Act of 1872. It is also our opinion that the defendant is a seaman within the meaning of Sec. 10 of the Seamen's Act of 1915 (46 U. S. Code Ann., Par. 713)."

The only decision we find which supports the opinion of the New Jersey Court of Errors and Appeals to the effect that the wages of seamen engaged in coastwise trade are exempt from execution, is the case of *Duggar* v. *Mobile & Gulf Nav. Co.*, 224 Ala. 359, 140 So. 611, affirmed 140 So. 614. In this case the plaintiff sought to garnishee the wages paid by the Mobile & Gulf Nav. Co. to one P. M. Tindle, a judgment debtor, the said Tindle being employed at that time by the Navigation Company as a pilot or mate on one of its tugs plying the Alabama River and the Mobile River. The Navigation Company raised the defense that Tindel's wages were exempt from execution by virtue of the provisions of Sec. 601, Title 46, U. S. C. A.

The Alabama Court of Appeals ruled that seamen engaged in ordinary coastwise trade were not entitled to exemption from attachment of wages because of the fact that Sec. 544 of the U. S. C. A. limited the provisions of Sec. 601 of the U. S. C. A. In denying a writ of certiorari to review the judgment of the Court of Appeals in this case, the Supreme Court of Alabama conceded that *Burns* v. *Fred L. Davis Co.*, 271 Fed. 439, was a holding that the Act of 1874 was not a limitation on Sec. 12 of the Act of 1915 before the adoption of the U. S. Code, but concluded (without citing any authority therefor), that merely because both the Act of 1874 and the Act of 1915 were included in the U. S. Code, such inclusion evidenced an intent of Congress to make the former a limitation on Sec. 12 of the latter. The latter assumption was, of course, a patent error, for it is obvious in the adoption of the U. S. Code, Congress had no intention of changing existing laws in any way but desired merely to adopt a handy single-volume compilation of the existing Federal laws, as we shall show in the following chapter having to do with the effect of the adoption of the U. S. Code on June 30, 1926.

(c) The Effect of the Adoption of the United States Code on June 30, 1926, and Supplements Thereto.

We must next inquire whether any subsequent legislation changed the rule with reference to the application of the exemption. While the exemption provision, Sec. 12 of the Act of 1915, has never been repealed, amended or re-enacted, Congress in 1926 did adopt the United States Code (Act of June 30, 1926, Chap. 712, 44 Stat. 777), which compilation included as part of Chap. 18, Title 46 of the Code, Sec. 12 of the Act of 1915 as Sec. 601, and also the Act of June 9, 1874, as Sec. 544.

The question is whether such inclusion of these two sections in the same chapter of the same title evidenced any

intent of Congress to make the latter a limitation on the former. It is to be noted that the Code Secs. 544 and 601 set forth verbatim and *without change in phraseology of any kind* the sections of the Acts of 1874 and 1915, from which they were taken.

That such inclusion did not in any way change the law as it existed when the Code was adopted is established beyond question by the provision enacting the Code (Act of June 30, 1926, Chap. 712, Sec. 2 a, 44 Stat. 777, 1-4 U. S. C. Sec. 2 a), which provides in part:

> "• • • nothing in this Act shall be construed as repealing or amending any such law, or as enacting as new law any matter contained in the Code • • •"

That no intention on the part of Congress to change the law can be inferred from the inclusion of two provisions in the same Title and Chapter of the Code was settled beyond doubt by the U. S. Supreme Court in *Warner* v. *Goltra*, 293 U. S. 155, decided November 5, 1934. In the latter case the Court said (p. 161), by Mr. Justice Cardozo:

> "The compilers of the Code were not empowered by Congress to amend existing law, and doubtless had no thought of doing so. As to that the command of Congress is too clear to be misread. 1-4 U. S. C. Sec. 2 a, 44 Stat. Part I, 1."

The same view is expressed in *Olson* v. *Mellon*, (D. C., W. D., Penna.), 4 F. Supp. 947, 949, Moreover, it has been held by this Court that the inclusion of a statute in the Code does not even operate as a re-enactment of such statute.

Smiley v. *Holm*, 285 U. S. 355, 373.

Lest there be some mistaken inference from the fact that the Act of June 9, 1874 was even included in the Code, it should be pointed out that while that Act clearly did not operate as a limitation on Sec. 12 of the Act of 1915, never-

theless the Act of 1874 itself had not been repealed, but continued in full force and effect as a limitation on other provisions of the Act of June 7, 1872. The compilers of the Code, therefore, naturally included the Act of 1874 in the Code. The inclusion indicates nothing but that the Act was *prima facie* part of the general and permanent laws of the United States. It would have been an inaccuracy to have excluded it from the Code.

In view of the foregoing, it is obvious that the decision of the Supreme Court of Alabama in *Duggar* v. *Mobile & Gulf Nav. Co.*, 224 Ala. 359; 140 So. 614, where it was held that even though the Act of 1915 permitted coastwise seamen the exemption, the United States Code of 1926 deprived them of its benefits. It was clearly erroneous and based on a misconception as to the effect of the code. It further follows that the New Jersey Court of Errors and Appeals, in adopting the *Duggar* case, also misconceived the effect of the code, and that its judgment should be reversed.

II.

Findlay, the captain of a tugboat, was a seaman within the provisions of Section 12 of the Act of March 4, 1915 (46 U. S. C. A. 601).

The Act of March 4, 1915, "To promote the welfare of American seamen in the merchant marine of the United States * * *", of which the exemption statute here involved is a part, i. e., Section 12 (46 U. S. Code, Sec. 601, 38 Stat. 1169), does not itself contain any definition of the word "seaman." The language of Section 12 is general. It is a rule of practically universal application that exemption statutes are to be liberally construed, and that provisions limiting or taking away an exemption are to be strictly construed.

In *Hills* v. *Joseph* (C. C. A. 9th), 229 Fed. 865, the Circuit Court of Appeals said, p. 869:

> "The rule of construction applicable to exemption statutes is the most liberal known to the law. As said in 18 Cyc. at page 1380:
>
> 'By all but universal rule the statutes which create or give the right of exemption to a debtor are held subject to the rule of liberal construction. Indeed, it would be more proper to say that they are generally subject to the most liberal construction which the Courts can possibly give them, the Courts taking the ground that, since the statutes have a beneficial object, their first duty is to see that this object is accomplished.' "

The purpose of the statute of 1915 was to benefit seamen generally; the purpose of Section 12 thereof, to protect the earnings of a class of men who from earliest days have occupied a favored place in the law. There is nothing in the Act or in the particular section to lead one to believe that the exemption statute is to be given a narrow construction.

The reasons for the rule exempting wages of seamen from garnishment apply equally to all those who follow the seas, including masters, other officers, and ordinary seamen. In *Wilder* v. *Inter-Island Nav. Co.*, 211 U. S. 239, 248, 249, the Court said:

> "The sailor's only means of subsistence on shore are his wages earned at sea. If these may be stopped by an attachment suit the instant his ship is moored to the wharf, a new hardship is added to a vocation already subject to its full share of the ills of life."

Obviously a master and his family are just as dependent on his wages as the other officers, ordinary seamen and their families are dependent on their wages, and there is no valid ground for excluding masters from the benefits of the ex-

emption statute which on its face is applicable to "any seaman". A master is in no better position to deal with his creditors than are the other officers and seamen aboard the vessel. The fact that a sailor has risen to the rank of master does not necessarily make him any more provident or solicitous of his family's welfare.

In the absence of any definition in the Act of 1915 it is important to see how the word "seaman" is generally construed.

In *In re Scott* (D. C., S. D., Ala.), 250 Fed. 647, a master mariner was held to be a seaman within Revised Statutes 2174 (Compiled Stat. 1916, Sec. 4357), permitting seamen under certain conditions to become citizens of the United States. The Court in that case, in discussing the meaning of the word "seaman," said:

> "'Seaman' is defined by Webster as: 'One whose occupation is to assist in the management of ships at sea; a mariner; a sailor; applied both to officers and common mariners.' It is common knowledge that a man must be a seaman before he can be a master. It is manifest that the word 'seaman' might be used in different enactments in different senses, and the intended sense might appear from the context. If there is nothing in the context to show the sense in which the word is used, then it seems to me that it should be given the broadest meaning, so as to include a master, as well as a common seaman, before the mast * * *. The fact that a man has made the most of his opportunities, and has risen to the head of his profession, should not bar him from receiving the benefits conferred on his profession."

In *United States* v. *Lindgren,* 28 F. (2d) 725 (C. C. A. 4th), affirmed 281 U. S. 38, it was held that a third officer was a seaman and was entitled to the benefit of the same Act, the Circuit Court of Appeals stating at page 728: "A seaman was defined by Congress in the Act of June 7, 1872,

as any person employed or engaged to serve on board a vessel. R. S. 4612 (46 U. S. C. A. Sec. 713)."

Likewise, under what is now Section 684, Title 46, Chapter 18, U. S. Code, (R. S. 4582) a master of a vessel was held entitled, if a citizen of the United States, to three months' additional wages on being discharged in a foreign port, as in the case of a like discharge of any other seaman or mariner.

11 *Op. Atty. Gen.*, 458 (1866).

Under various other laws, masters have been held seamen. In *The Burns Brothers No. 31* (D. C., E. D. N. Y.), 29 F. (2d) 855, it was held that a master is a seaman within the meaning of the statute providing that the courts of the United States shall be open to seamen without furnishing bonds for costs (Title 28, U. S. Code, Sec. 837).

Again, in cases involving the right of a seaman to maintenance and cure under the general maritime law, the master of a ship has been considered a seaman.

The Balsa (C. C. A., 3rd), 10 F. (2d) 408;
Van Lier v. *Dord*, Fed. Cases No. 16, 862;
The George, Fed. Cases No. 5, 329.

Other cases illustrating the broad construction given the word "seamen" are *The Buena Ventura* (D. C., Ga.), 243 Fed. 797, 799, 800, where the Court said: "* * * everyone is entitled to the privilege of a seaman who, like seamen, at all contribute to and labor about the operation and welfare of the ship when she is upon a voyage * * * a man who serves the ship as the result of a contractual engagement of any kind, and serves her in navigation * * *," and the *ZR-3* (D. C., Wash.), 18 F. (2d) 122, where the word seaman was defined as including all persons employed on a vessel to assist the main purpose of the voyage. See also,

51 C. J., p. 922, where it is said: "Broadly speaking, the term 'seaman' includes a ship's officer, as well as her men."

The broad meaning of the word seaman was used by this Court in *Nogueira* v. *N. Y., N. H. & H. R. Co.*, 281 U. S. 128, 134, 135, 136:

> "It appears that the bill (Longshoremen's and Harborworker's Compensation Act) originally excluded a master or member of a crew of a vessel, but was amended so as to extend to them the benefit of compensation * * *. *As the seamen* preferred to remain outside of the provisions of the bill, they were finally excluded and the bill was passed with the exceptions above quoted." (Italics ours.)

In *U. S.* v. *Nelson* (D. C., S. D., Ala.), 100 Fed. 125, 126, it was said: "The term 'seamen' * * * clearly means those Americans who practice or are employed in navigation—whose avocation is that of mariner."

Webster's New International Dictionary defines "seamen" as:

> "One whose occupation is to assist in the management of ships at sea; a mariner; * * *; applied both to officers and especially to common sailors. Opposed to landsman. Specif.: (a) In the *English Merchant Shipping Act,* s. 742 (1894), any person (*except masters,* pilots, and apprentices duly indentured and registered) employed or engaged in any capacity on board any ship; (b) in the *United States Revised Statutes* (Sec. 4612), any person (*apprentices excepted*) employed or engaged to serve in any capacity on board a vessel." (Italics ours.)

Originally, in the days of sailing vessels, the word "seaman" meant one who could "hand, reef and steer," but the courts in attempting to keep up with changed conditions in navigation have given it an enlarged meaning (*Meyer*

v. *Dollar Steamship Line,* 43 F. (2d) 425, 426; *The Buena Ventura,* 243 Fed. 797, 799; *The Sea Lark,* 14 F. (2d) 201): Consequently the following persons have been held to be seamen: The owner of an (*The Sea Lark, supra*); a cook (*Allen* v. *Hallett,* 1 Fed. Cas. No. 223, pp. 472, 473) a fireman (*The North American,* 18 Fed. Cas., p. 339); an employee of a dredge (*Saylor* v. *Taylor,* 77 Fed. 476); a wireless operator (*The Buena Ventura, supra*); a carpenter (*Kuhlman* v. *W. & A. Fletcher Co.,* 20 F. (2d) 465; *Rogosich* v. *Union Dry Dock & Repair Co.,* 67 F. (2d) 377); a horseman (*U. S.* v. *Atlantic Transport Co.,* 188 Fed. 42, 43); a diver (*DeGaetano* v. *Merritt & Chapman D. & W. Co.,* 203 App. Div. 259, 196 N. Y. S. 573); an engineer of a dredging barge (*City of Los Angeles* v. *United Dredging Co.,* 14 F. (2d) 365); a watchman (*Grimberg* v. *Admiral Oriental Steamship Line,* 300 Fed. 619); a pilot (*The Mary Elizabeth,* 24 Fed. 397); a cooper (*U. S.* v. *Thompson,* 28 Fed. Cas. 102); a hand on a river boat (*Martin* v. *Acker,* 16 Fed. Cas., p. 884); and a surgeon, porter and chambermaid (see *Meyer* v. *Dollar Steamship Line, supra*).

Certainly if all the above persons are to be classed as seamen and given privileges accorded seamen, a master should be given the same privileges except when statutory provision expressly *excludes* him. He is employed to serve on board a vessel and to assist in the main purpose of the voyage. He contributes to the welfare of the ship and serves her in navigation. He runs the same risks, encounters the same dangers, and is engaged in the common adventure of sailing and safeguarding his employer's vessel and its cargo. The only difference between him and the persons mentioned above is that his work is more important than theirs, and his presence on board the vessel more necessary.

Remembering, therefore, that Section 12 of the Act of 1915 is an exemption statute which must be liberally construed, and that the words used therein have a flexible mean-

ing, it seems clear to us that the word "seaman" used in said section is broad enough to include a master of a vessel. That word is a general one, which includes several classes of persons, and no authority justifies restricting it to one class, or in giving it the narrowest possible interpretation. The protection to be afforded by the statute is equally applicable to all classes.

In *Ellis* v. *United States,* 206 U. S. 246, this Court expressly said that masters and captains, as well as others employed on various vessels, such as mates, engineers, firemen, cranemen and deckhands, were seamen. That case involved indictments and information relating to the limitation of hours of daily service of laborers and mechanics employed upon public works. At p. 259, Mr. Justice Holmes stated:

> "The words laborers and mechanics are admitted not to apply to seamen as that name commonly is used. Therefore it was contended but faintly that the masters of the tugs could not be employed more than eight hours. But the argument does not stop with masters of tugs, or even with mates, engineers and firemen of the same. *Wilson* v. *The Ohio,* Gilpin 505; *Holt* v. *Cummings,* 102 Pa. St. 212. The scows and floating dredges were vessels. *Rev. Stat.* Secs. 3, 4612. They were within the admiralty jurisdiction of the United States. *The Robert W. Parsons,* 191 U. S. 17. * * * *Therefore all of the hands mentioned in the informations were seamen within the definition in an earlier statute of the United States. Rev. Stat.* Sec. 4612; * * *." (Italics ours.)

Although three judges dissented from the opinion in the *Ellis* case so far as it related to the employment for more than eight hours a day of men engaged in working on dredges and scows, all of the members of the Court were in agreement that the master of a seagoing tug is a seaman.

At page 264 of the dissenting opinion of Mr. Justice Moody, it is said:

> "Seamen, whether employed in the Navy or other marine service of the United States or by contractors with the United States, are not laborers or mechanics. They, while laboring as seamen, could no more be brought within the limits of an eight-hour day than a physician, a lawyer, or a clergyman. They have always been regarded with special favor by all governments, and a series of laws specially applicable to them control and affect their conditions of labor. *The men employed on the seagoing tug, from the master down, were seamen, and their work was the work of seamen,* and the conviction with respect to them was, I agree, erroneous." (Italics ours.)

We respectfully submit that Findlay, as captain of a tug, was a seaman, and as such was entitled to have his wages exempt from execution or garnishment by the Seamen's Act of 1915.

Conclusion.

It is respectfully submitted (1) the wages of seamen, including those engaged in coastwise trade are exempt by Federal law from execution or garnishment by virtue of the provisions of Sec. 12 of the Seamen's Act of March 4, 1915; (2) that a master or captain of a tug is a seaman within the purview of Sec. 12 of that Act.

Respectfully submitted,

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EDWARD A. MARKLEY,
Of Counsel.

APPENDIX.

Chapter 204—Laws of 1924.

A Supplement to "An Act concerning District Courts" (Revision of 1898), approved June fourteenth, eighteen hundred and ninety-eight.

Be it Enacted by the Senate and General Assembly of the State of New Jersey:

1. Rights and credits in the nature of personal property of the defendant in execution, or if defendant be sued in a representative capacity, within his custody or control as such representative, may be levied upon, taken and sold or collected by virtue of said execution.

2. The term "rights and credits" includes all rights and credits in the nature of personal property which may be attached by writ of attachment against nonresident debtors, and also includes rights and credits in the nature of personal property of an equitable nature, except such trust funds as are now exempt by law.

Such rights and credits shall be levied upon and taken in the manner in which property is attached under writs of attachment against nonresident debtors under the act to which this is a supplement.

3. No sale shall be made of such rights and credits, unless by leave of the court.

4. Sales of rights and credits in the nature of personal property shall be made in the manner provided for judicial sales of chattels under the act to which this act is a supplement.

5. In lieu of the sale of such rights or credits, the officer charged with the duty of levying said execution may, in his own name, as such officer, liquidate said rights and credits by collection or, with the assent of the plaintiff (and subject to other provisions of this act), in any other manner; and to that end, he shall, on request of the plaintiff, sue, or take any proper proceedings, at law or in equity, in his own name as such officer to obtain such recovery or relief as the

defendant would be entitled to, or as any receiver of such defendant would be entitled to.

6. After such rights or credits shall have been levied upon and taken, and upon application of plaintiff or defendant, the judge of the court out of which the execution shall be issued, may, in his discretion, appoint a receiver of the same.

7. Upon filing the order of appointment, the receiver shall be vested with the title to said rights and credits which the defendant had at the time of the levy upon the same. It shall be his duty to liquidate the same by sale (subject to the other provisions of this act), collection or otherwise; and to that end, he may sue, or take any proper proceedings at law or in equity, in his own name as receiver, to obtain such recovery or relief as the defendant would be entitled to if no execution had been issued. He shall apply the sums collected by him in payment of the amount due upon the execution, with costs, and his necessary expenses; and after retaining such reasonable compensation as shall be fixed by the court, he shall pay the balance into court.

8. The court may, at any time, in his discretion, direct the receiver to give bond for the faithful performance of his duties in an amount and with such security as the judge may, by order, prescribe.

9. After levy shall have been made under this act upon any debt due or accruing from a third person (herein called the garnishee) to the judgment debtor, the court may make an order upon such garnishee and the judgment debtor to show cause why the said debt (to an amount not exceeding the sum necessary to satisfy said execution) should not be paid to the officer holding the execution, or to the receiver. Upon return of the order to show cause, or at any time to which the hearing may be continued, an order may be made requiring the garnishee to pay said debt, if he admits it, to the officer holding the execution, or to the receiver, either in one payment or in installments, as the court shall deem just, which order may, at any subsequent time, on application, be modified, as may be just.

10. In case it shall be made to appear by affidavit that a judgment debtor is entitled to, or is in receipt of an income,

other than from such trust funds as are now exempt by law, the court may make an order requiring the defendant to show cause why he should not be ordered to make payments at stated periods, in installments (and upon such terms as the court may direct), out of such income on account of the execution. And upon the return of the order to show cause, or at any time to which the hearing may be continued, may make an order for such payments as aforesaid; and at any subsequent time, on application, may modify the terms thereof as may be just.

11. Hereafter when a judgment has been recovered in any District Court of this State and where an execution issued upon said judgment has been returned wholly or partly unsatisfied and where any wages, debts, earnings, salary, income from trust funds, or profits are due and owing to the judgment debtor, or shall thereafter become due and owing to him to the amount of eighteen dollars or more per week, the judgment creditor may apply to the court in which said judgment was recovered, without notice to the judgment debtor, and upon satisfactory proofs of such facts by affidavits or otherwise, the court must grant an order directing that an execution issue against the wages, debts, earnings, salary, income from trust funds, or profits of said judgment debtor and on presentation of such execution by the officers to whom delivered for collection to the person or persons from whom such wages, debts, earnings, salary, income from trust funds or profits are due and owing, or thereafter become due and owing, to the judgment debtor, said execution shall become a lien and a continuing levy upon the wages, debts, earnings, salary, income from trust funds or profits due or to become due to said judgment debtor to the amount specified therein, which shall not exceed ten per centum unless the income of said debtor shall exceed the sum of one thousand dollars per annum, in which case the judge may order a larger percentage, and said levy shall become a continuing levy until said execution and the expenses are fully satisfied and paid or until modified as hereinafter provided, but only one execution against the wages, debts, earnings, salary, income from trust funds or profits of said judgment debtor shall be satisfied at one time, and where

more than one execution has been issued or shall be issued pursuant to the provisions of this section against the same judgment debtor they shall be satisfied in the order or priority in which such executions are presented to the person or persons from whom such wages, debts, earnings, salary, income from trust funds or profits are due and owing.

12. It shall be the duty of any person, persons, agent, treasurer, or other fiduciary officer of a private or public municipal corporation, including any county and the State, to whom said execution shall be presented, and who shall at such time be indebted to the judgment debtor named in such execution, or who shall become indebted to such judgment debtor in the future, and while said execution shall remain a lien upon said indebtedness, to pay over to the officer presenting the same, such amount of such indebtedness as such execution shall prescribe until said execution shall be wholly satisfied, and such payment shall be a bar to any action therefor by any such judgment debtor. If such a person, persons or the proper officer of the corporation, private, municipal, county or State, to whom said execution shall be presented shall fail or refuse to pay over to said officer presenting said execution the percentage of said indebtedness, he shall be liable to an action therefor by the judgment creditor named in said execution, and the amount so recovered by such judgment creditor shall be applied towards the payment of said execution. Either party may apply at any time to the court from which such execution shall issue, upon such notice to the other party as such court shall direct, for a modification of said execution, and upon such hearing, the said court may make such modification of said execution as shall be deemed just, and such execution as so modified shall continue in full force and effect until fully paid and satisfied, or until further modified as herein provided.

13. Nothing in this act contained shall impair any provision of the act to which this is a supplement.

14. This act shall take effect immediately. Approved March 12, 1924.

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Supreme Court of the United States

OCTOBER TERM—1937.

No. 167.

CHARLES F. BLACKTON,
Petitioner,

vs.

AARON GORDON.
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JOHN W. OCKFORD,
AARON GORDON,
Counsel for Respondent.

Table of Contents

PAGE

Statement 1

I—Congress never intended to give an exemption to a tugboat captain employed on regular trips and who reports for daily work at 4:00 P: M. finishing regularly at midnight and who lives in Jersey City and not on a boat..... 2

II—The Statute exempting a seaman's wages from execution (Sec. 601, Title 46, U.S.C.) does not apply to seamen in the coastwise trade (Sec. 544, Title 46, U.S.C.)..... 4

III—A Writ of Certiorari, not being a matter of right, should not be granted to this petitioner, who is not the person affected by the levy..... 8

IV—The application for a writ of certiorari should be denied.

(a) Findlay was a Master and not a seaman and was exclusively in the coastwise trade.

(b) The wages of a seaman in coastwise trade are not exempt.

(c) Petitioner does not show merit in his application 8

Table of Cases Cited

	PAGE
Burns v. *Davis*, 271 Fed. 442	6
Duggar v. *Mobile & Gulf Co.*, 25 Ala. A. 2, s. c. 140 Southern 611, 224 Alabama 359, s. c. 140 Southern 614	6, 7
Inter-Island v. *Byrne*, 239 U. S. 459	4, 5, 7, 8
Jackson v. *Hauffman*, 159 N. Y. Misc. 182, s. c. 287 N. Y. Supp. 177	6
Manufacturers Trust Co. v. *Anderson*, 241 App. Div. 843, 271 N. Y. Supp. 333	6
Migliaccio v. *Cappola*, 160 N. Y. Misc. 557, 289 N. Y. Supp. 891	7
Olson v. *Mellon*, 4 Fed. Supp. 947	7
Ornstein v. *Pittsburg S. S. Co.*, 209 Ill. App. 202	6
Smiley v. *Holm*, 285 U. S. 355	7
Uravic v. *F. Jarka Co.*, 282 U. S. 234	7
U. S. v. *Smith*, 95 U. S. 536	4
U. S. v. *The Grace Lothrop*, 95 U. S. 527, 532	5
Warner v. *Goltra*, 293 U. S. 155	2, 3
Wilder v. *Inter-Island Co.*, 211 U. S. 239	7

Table of Statutes Cited

Act of June 7, 1872 (17 Stat. 262, 276)	2, 4, 5, 6
Act of June 9, 1874 (18 Stat. 64)	4, 5, 7
Act of March 4, 1915	2, 4, 6, 7
Act of May 29, 1928	5
1920 Statute (Jones Act)	3
Revised Statutes of June 22, 1874 (sec. 4536)	5
U. S. Code, Section 544, Title 46	1, 4, 5, 7
U. S. Code, Section 601, Title 46	1, 4, 5

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Statement

Petitioner seeks a writ of certiorari to review the determination of the New Jersey Court of Errors and Appeals which held that Section 544 of Title 46 of the U. S. Code should be read in connection with and in limitation of Section 601, of the same Title.

Petitioner contends that Section 601 should be read alone and that Section 544 should be disregarded.

The question is whether a tug-boat captain, the Master of a vessel, engaged wholly in the coastwise trade, living on shore, working on an eight hour shift, earning from $200.00 to $215.00 a month, being paid by check every two weeks, is entitled to an exemption from garnishee process issued at the instance of a judgment-creditor.

Respondent contends that Congress never intended to exempt wages so earned and paid from the levy of an execution and that Section 601 should be read not only in connection with Section 544, but also in the light of its history and judicial interpretation.

I.

Congress never intended to give an exemption to a tugboat captain employed on regular trips and who reports for daily work at 4:00 P. M. finishing regularly at midnight and who lives in Jersey City and not on a boat.

That these are the facts clearly appears from the record (R., 18-20).

It is the underling on ship who is the ward of the admiralty and who is the object of statutory solicitation.

The original enactment was in 1872 (June 7). It was reenacted in 1915 (March 4). The system of Shipping Commissioners was set up for the protection of the seamen hired by the master.

The seaman is protected as to treatment, food, wages, health and disciplinary measures.

The master is not the one to be protected. He can protect himself. The men under him are to be saved from the uncontrolled power of the master of a ship.

This distinction is fully pointed out in

Warner v. *Goltra*, 293 U. S. 155,

as follows (p. 162):

> "The case for the respondent reduces itself to this, that by express or implied antithesis the word seaman is used in many statutes to designate a class of mariners exclusive of the master. It is also true, however, that in these same statutes a seaman excludes a stevedore. A goodly number of the statutes where the antithesis is sharpest lay a duty upon the

> master to be performed for the seamen under him. In law, so framed, there is no room for construction. A goodly number in addition give a remedy to seamen for wages wrongfully withheld, or define terms of payment that agreement may not vary. In respect of dealings of that order, the maritime law by inveterate tradition has made the ordinary seaman a member of a favored class. He is a 'ward of the admiralty', often ignorant and helpless, and so in need of protection against himself as well as others. The master, on the other hand, is able in most instances to drive a bargain for himself, and then when the bargain is made, to stand upon his rights. Discrimination may thus be rational in respect of remedies for wages. *The Bethulia*, (D. C.) 200 F. 876; *The Putnick*, (D. C.) 291 F. 902."

This is not a case under the 1920 Statute (Jones Act) the language of which, because of its purpose, requires a wider definition of the word "seamen."

Quoting again from *Warner* v. *Goltra, supra,* we find (p. 161):

> "The rule of construction laid down in section 713 must be confined to those sections of the chapter which were contained in the Act of 1872, or in the equivalent provisions of the Revised Statutes, before the Code had re-arranged them. The compilers of the Code were not empowered by Congress to amend existing law, and doubtless had no thought of doing so. As to that the command of Congress is too clear to be misread (1-4 U.S.C., sec. 2a, 44 Stat. at L. pt. 1, p. 1). To this it must be added that section 713, even in its relation to the sections fairly with its range, is 'directed to extension not to restriction'. *Uravic* v. *Jarka Co., supra* (282 U. S. 239, 75 L. ed. 314, 51 S. Ct. 111). It means that